Held, that damages for mental suffering were properly allowed. *Lewis, et al.* v. *Holmes* (1903), 109 La. 1030, 61 L. R. A. 274.

The decision in this case well illustrates the fears expressed by the Wisconsin court in an opinion refusing to allow damages for mental suffering, in the case of *Summerfield* v. *W. U. Tel. Co.*, 87 Wis. 1, 57 N. W. 973. "If a jury must measure the mental suffering occasioned by the failure to deliver this telegram, must they not also," says the court, in that case, "measure the vexation and grief arising from a failure to receive an invitation to a ball or a Thanksgiving dinner?" If the principal case is good law, we surely must answer this question in the affirmative. The court, in applying the new doctrine allowing damages for mental suffering alone, seems entirely to lose sight of the fundamental doctrines regarding the recovery of damages for breach of contract, that the plaintiff can never recover more than such pecunlary loss as he has sustained. ANSON ON CONTRACTS, p. 311. Most courts which have followed the Texas courts in allowing damages for mental suffering, unaccompanied by physical injury, limit the application of the doctrine to those cases in which the death of a relative was involved. *Chappell* v. *Ellis*, 123 N. C. 259, 31 S. E. Rep. 709, 68 Am. St. Rep. 822. No authorities can be found to support the court to the extent to which it has gone, and the weight of authority is against the allowance of damages for mental suffering unconnected with physical injury, in any case except the few allowed at common law. See preceding note on *Dunn* v. *Smith* and references there given. The decision in this case is palpably wrong, and should not be followed. The case also involves an interesting question of pleading, which seems, however, to have been settled in accordance with the provisions of the Louisiana Code.

DAMAGES — PLEADING — SPECIAL INJURY — ADMISSIBILITY OF EVIDENCE.—In an action to recover damages for a personal injury, the declaration alleged that, by the wrongful act of the defendant, the plaintiff was thrown violently to the ground and "was thereby greatly bruised, hurt and wounded, and sustained a severe concussion of the spine, and the tissues and nerves in the gluteal region of the right hip were severely bruised and injured, causing a great wasting and shrinking of the right leg, and the nerves, muscles and tissues thereof; and he has become permanently disabled from performing manual labor * * * from thence hitherto, and has suffered great pain and anguish of mind and body, and will continue to so suffer in the future, and became and was sick, sore, lame and disordered, and so remained for a long space of time, to wit, from thence hitherto." Upon the trial, plaintiff was permitted to show, over defendant's objection, that the declaration did not allege it, that one of the results of the injury was "neuritis of the sciatic nerve." *Held*, no error. *Leslie* v. *Jackson & Suburban Traction Co.* (1903), — Mich. —, 96 N. W. Rep. 580.

Injuries which are not the necessary, the ordinary, the usually to be expected, consequences of the wrongful act, must be specially alleged in the plaintiff's declaration, in order to justify a recovery. The defendant when he comes to trial may fairly be presumed to come prepared to meet evidence of the natural and necessary consequences of his act, but he cannot, unless reasonably forewarned, be presumed to be prepared to encounter proof of unusual and exceptional consequences. Hence to prevent unfair surprise, allegations of such exceptional consequences are required. "Neuritis of the sciatic nerve" is not a *necessary* consequence of being thrown violently to the ground, and proof of it must therefore be reasonably foreshadowed by the pleadings. Did the declaration do this? Injuries to the "nerves in the gluteal region of the

right hip" were alleged. "Neuritis" is inflammation of the nerves; the sciatic nerves are the nerves of the hip. It would seem therefore that the defendant was fairly apprised of the nature of the case he must be prepared to meet and could not reasonably claim to be taken by surprise. The evidence, consequently, was admissible under the allegations. In *West Chicago St. R. Co.* v. *Levy*, 182 Ill. 525, 55 N. E. 554, under allegations of injury to "the back, spine and brain," evidence of "atrophy of the optic nerve" was held admissible, though two judges dissented and the ruling is certainly debatable. In *Kleiner* v. *Third Ave. R. Co.*, 162 N. Y. 193, 56 N. E. 497, proof of heart affection, paralysis of the dorsal muscles, vertigo and curvature of the spine was held not admissible under allegations of severe and painful contusions, severe nervous shock, concussion of the brain and injury for life. One judge dissented. The general question is fully discussed in the latter case. See also *Heister* v. *Loomis*, 47 Mich. 16; *Nebraska City* v. *Campbell*, 2 Black (U. S.) 590; *Hunter* v. *Stewart*, 47 Me. 419.

ELECTIONS—RIGHT OF BOARD OF ALDERMEN TO JUDGE OF ELECTION OF ITS OWN MEMBERS—CONSTRUCTION OF CHARTER.—By the charter of New York City, "the board of aldermen shall be judge of the election returns and qualifications of its own members, subject to review by certiorari of any court of competent jurisdiction." On the face of the returns, as they came from the board of canvassers, relator was defeated for alderman by one Chambers by a majority of 8 votes. Relator contested the election before the board of aldermen, who referred the matter to a committee. The committee recounted the votes and the majority report conceded the election to the relator by 103 votes. The minority report declared Chambers elected by 73 votes. The board upheld the minority report. In the Supreme Court, where the case was taken by certiorari, it was held that the board of aldermen had no authority to go behind the official returns; that in the phrase "judge of the election returns and qualifications" in the city charter, the word was used adjectively and not as a noun. (80 N. Y. Supp. 385). From this decision relator appeals. *Held*, that the word "election," as used in the charter, is a noun, and that the board of aldermen were not bound by the returns, but could go behind them in ascertaining whether a contestant was duly elected. But owing to the fact that the validity of the board's finding had not been properly brought before it, the court refused to disturb that finding. *People ex rel Krulish* v. *Fornes et al* (1903), — N. Y. — 67 N. E. Rep. 216.

In determining the meaning of the words "election returns and qualifications" the majority of the court applied the interpretation which has been universally given to the words "elections, returns and qualifications" as used relative to Congress in the United States constitution, and to similar words in most of the State constitutions. The omission of the comma was held to be of no importance. The minority however, in a vigorous opinion held that the comma had been purposely omitted by the commission which revised the charter with the evident purpose of limiting the power of the board and that it was quite inconceivable that the Legislature intended to grant to the board power to make a judicial inquiry, by calling witnesses to prove how many illegal votes had been cast for contesting candidates, etc.

The majority opinion is supported by *State* v. *Common Council*, 33 N. J. L. 111, where the wording of the charter was exactly as in this case. A perusal of the cases also shows that it is not only customary for the States to grant judicial power to municicipal legislative bodies in determining the election of its members, but that in many cases, this power has been expressly made exclusive of the courts. Where not made expressly exclusive, by weight of